BLANK

PAGE

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 3 1966
JOHN F. DAVIS, CLERK

No. 778

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1966

UNITED STATES OF AMERICA EX REL.
EDGAR I. SHOTT, JR.,
Petitioner,

v.

DAN TEHAN, SHERIFF OF HAMILTON COUNTY,
OHIO,
Respondent.

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MELVIN G. RUEGER
Prosecuting Attorney

CALVIN W. PREM
Ass't. Prosecuting Attorney

420 Court House
Cincinnati, Ohio 45202
Counsel for Respondent

COURT INDEX PRESS, INC. — Law Printers — 809 Walnut Street, Cincinnati, Ohio 45202

BLANK

PAGE

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
ARGUMENT OPPOSING PETITION FOR WRIT OF CERTIORARI	2

TABLE OF CITATIONS

Cases:

Automatic Canteen Co. of America v. Fed. Trade Commission, 194 Fed.(2d) 433	3
Casey v. United States, 276 U.S. 413 (1928)	3
Catterlin v. State, 16 O.L.A. 410 (1939)	4
Commonwealth v. Freed, 106 Pa.Super 529, 162 Atl. 679 (1932)	3
Delaware Coach Co. v. Savage, 81 Fed.Supp. 293	3
Fitch v. Firestone, 184 Fed.Supp. 424	3
Hall v. Geiger Jones Company, 242 U.S. 539 (1916)	3
Karabagui v. The Shickohinny, 123 Fed.Supp. 99	3
Kreutzer v. Westfahl, 187 Wisc. 463, 204 N.W. 595 (1925)	3
Manley v. Georgia, 279 U.S. 1	3
Mobile, J. & K.C. R.R. v. Turnipseed, 219 U.S. 35	3
Morrison v. California, 291 U.S. 82 (1934)	3
Nelson v. State, 355 P.(2d) 413 (1960)	4
Rehm v. U. S., 183 Fed.Supp. 157	3
Sherman Inv. Co. v. U. S., 199 Fed.(2d) 504	3
Speizer v. Randall, 357 U.S. 513 (1958)	3
State v. Vorhies, 169 La. 626, 125 So. 737 (1930)	3
Tot v. United States, 319 U.S. 463 (1943)	3
United States v. Romano, 382 U.S. 136 (1965)	3
Woods v. Schwartz, 88 Fed.Supp. 385	3
Yee Hem v. United States, 268 U.S. 178 (1925)	3

Statute:

R. C. 1707.44 (A) and (C)	1

BLANK

PAGE

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 778

UNITED STATES OF AMERICA EX REL.
EDGAR I. SHOTT, JR.,
Petitioner,

v.

DAN TEHAN, SHERIFF OF HAMILTON COUNTY,
OHIO,
Respondent.

RESPONDENT'S REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

STATEMENT OF THE CASE

The Petitioner was tried to a jury, and convicted, on charges of violating *Section 1707.44 (A) and (C),* of the Revised Code of Ohio. Specifically, the charges were that the Petitioner sold, caused to be sold, or caused to be offered for sale, a security and was not, at that time, licensed to sell securities as required by Ohio law; and that he knowingly, unlawfully, and intentionally sold caused to be sold, offered for sale or caused to be offered for sale, a security which was not registered as required by Ohio law.

The evidence established that the recipient of the note heard about the investment opportunities of the Petitioner's

investment company; that he went to the Petitioner's office intending to invest $1,000.00; that he was shown a prospectus concerning the investment company's growth and worth and, thereupon, invested $2,000.00 for which he received twelve and one-half per cent interest over a period of sixty days; that the note bore the Petitioner's signature under the name "Shott Investment Company".[1] (App. 27 through 38). The evidence further established that the Petitioner was not licensed to sell or deal in securities (App. 24) and that the security was not registered (App. 25). Petitioner's attorney, in fact, stipulated this part of the case. (App. 25, 20 and 21).

After being fully and properly instructed by the Court (App. 67 to 79), the jury deliberated and returned a "guilty" verdict.

ARGUMENT OPPOSING PETITION FOR WRIT OF CERTIORARI

The Respondent herein respectfully submits that this Court should deny the instant Petition for Writ of Certiorari for the following reasons:

1. The Sixth Circuit Court of Appeals, in its decision affirming the judgment of the District Court in the instant case (365 Fed.(2nd) 191, Aug. 19, 1966) correctly interpreted and followed the decisions of this Court, and the law, on the subjects of "statutory presumptions of guilt" and the "shifting of the burden of proof" by imposing upon an accused the duty of going forward with, and establishing by a preponderance of, evidence that his otherwise proscribed act was legally exempted.

---

[1] For both convenience and uniformity, record references are to Appellant's Appendix in the Court of Appeals, filed with the Petition for Writ of Certiorari, and are also referred to as "App."

Although the Fourteenth and Fifth Amendments establish limits upon the legislature to make proof of one fact, or groups of facts, proof of the ultimate fact upon which guilt is predicated, the application of *Yee Hem* v. *United States,* 268 U.S. 178 (1925); *Casey* v. *United States,* 276 U.S. 413 (1928); *Morrison* v. *California,* 291 U.S. 82 (1934); *Tot* v. *United States,* 319 U.S. 463 (1943); *Speizer* v. *Randall,* 357 U.S. 513 (1958); and *United States* v. *Romano,* 382 U.S. 136 (1965); to the facts in the instant case shows that the shifting, to the Petitioner, of the burden of proving by a preponderance of the evidence, that the promissory note in question fell within the exempted status of Ohio law was not unreasonable, did not offend any principle of justice and did not constitute a denial of due process of law.

Mobile, J. & K. C. R.R. v. *Turnipseed,* 219 U.S. 35.
Manley v. *Georgia,* 279 U.S. 1.
Automatic Canteen Co. of America v. *Fed. Trade Commission,* 194 Fed. (2d) 433.
Sherman Inv. Co. v. *U. S.,* 199 Fed. (2d) 504.
Woods v. *Schwartz,* 88 Fed. Supp. 385.
Fitch v. *Firestone,* 184 Fed. Supp. 424.
Rehm v. *U. S.,* 183 Fed. Supp. 157.
Karabagui v. *The Shickohinny,* 123 Fed. Supp. 99.
Delaware Coach Co. v. *Savage,* 81 Fed. Supp. 293.

2. The constitutional validity of the Ohio Securities Act was upheld in *Hall* v. *Geiger Jones Company,* 242 U.S. 539 (1916); and, similar provisions in other State securities acts have been upheld and affirmed by the State courts in *Kreutzer* v. *Westfahl,* 187 Wisc. 463, 204 N.W. 595 (1925); *State* v. *Vorhies,* 169 La. 626, 125 So. 737 (1930); *Commonwealth* v. *Freed,* 106 Pa. Super 529, 162 Atl. 679 (1932);

Nelson v. *State,* 355 P. (2d) 413 (1960); *Catterlin* v. *State,* 16 O.L.A. 410 (1939).

The Respondent asserts that the judgment and opinion of the Sixth Circuit Court of Appeals properly interprets and applies the law; and that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

MELVIN G. RUEGER
Prosecuting Attorney

CALVIN W. PREM
Ass't. Prosecuting Attorney
Counsel for Respondent